

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

HECTOR MORGAN

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C.A. No. 07-720

v.

DAVID A. MARSH and WAYNE STORAGE CO. :
T/A WAYNE MOVING & STORAGE :
COMPANY, INC. :

JURY TRIAL DEMANDED

NOTICE OF MOTION

TO: Bruce L. Hudson, Esquire
800 N. Kings Street, Ste. 302
Wilmington, DE 19801

PLEASE TAKE NOTICE that the undersigned will present the defendants, David Marsh and Wayne Storage Co.'s, Motion to Compel will be presented to the Court on September 12, 2008 at 2:00 p.m. or soon thereafter as may be heard.

RAWLE & HENDERSON LLP

By: /s/ Delia A. Clark
Delia A. Clark 3337
Attorneys for Defendants,
David A. Marsh and Wayne Storage Co., t/a
Wayne Moving & Storage Company, Inc.
300 Delaware Avenue, Suite 1015
Wilmington, DE 19809

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

HECTOR MORGAN

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C.A. No. 07-720

v.

DAVID A. MARSH and WAYNE STORAGE CO. :
T/A WAYNE MOVING & STORAGE :
COMPANY, INC. :

JURY TRIAL DEMANDED

ORDER

AND NOW, on this day of , 2008, upon
consideration of defendants' Motion to Compel and for Sanctions, and plaintiff's
response thereto, if any, it is hereby ORDERED that said Motion is GRANTED and
plaintiff Hector Morgan shall appear for an independent medical examination on or risk
further sanctions including dismissal of the above captioned matter.

IT IS FURTHER ORDERED that plaintiff pay the defendants \$1,2000.00 as
reimbursement of the fees incurred for the two missed examinations.

BY THE COURT:

J.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

HECTOR MORGAN	:	
	:	C.A. No. 07-720
v.	:	
DAVID A. MARSH and WAYNE STORAGE CO.	:	JURY TRIAL DEMANDED
T/A WAYNE MOVING & STORAGE	:	
COMPANY, INC.	:	

DEFENDANTS' MOTION TO COMPEL IME AND FOR SANCTIONS

Pursuant to Federal Rules of Civil Procedure 35 and 37, defendants, David A. Marsh and Wayne Storage Co., t/a Wayne Moving & Storage Company, Inc., hereby move this Honorable Court for an Order compelling plaintiff, Hector Morgan, to attend an independent medical examination, and in support of their motion aver as follows:

1. On June 11, 2008, defendants scheduled the independent medical examination of plaintiff, Hector Morgan, with Dr. Steven Fedder to take place on July 7, 2008. A true and correct copy of the June 11, 2008 transmittal letter is attached hereto as Exhibit "A."
2. Also, on June 11, 2008, defendants confirmed that they had arranged for plaintiff's transportation from his home to the examination. See, June 11, 2008 correspondence, attached hereto as Exhibit "B."
3. On July 7, 2008, defendants' transportation service arrived at plaintiff's residence to transport him to Dr. Fedder's office.
4. Morgan did not appear at the scheduled time of 7:45 a.m.
5. Defendants' transportation service waited at plaintiff's residence for over an hour, in case plaintiff was running late.
6. Mediation in this matter was scheduled for August 7, 2008.

7. After consultation with opposing counsel, the first available date for an appointment for the examination with Dr. Fedder was August 4, 2008.

8. Again a notice was sent and transportation was arranged. (See attached letter as Exhibit "C")

9. On August 4, 2008, Boston Coach arrived to transport Mr. Morgan. The driver went to the apartment building and rang Mr. Morgan's bell several times. He waited forty minutes outside and Mr. Morgan did not come out of the building.

10. The appointment was confirmed with counsel. (See attached email as Exhibit "D")

11. Plaintiff has placed his physical condition at issue in this matter. Pursuant to F.R.C.P. 35, defendants are entitled to a physical examination of the plaintiff.

12. Defendants have made a good faith effort to obtain the examination, going so far as to provide transportation to plaintiff and have incurred missed appointment fees as well as costs fro the transportation.

13. Without a physical examination of the plaintiff, defendants will be prejudiced in this matter.

14. Defendants have also been prejudiced by plaintiff's failure to appear for the examination with Dr. Fedder as they have been forced to pay Dr. Fedder's "no-show" fee and the fee for Boston Coach Transportation. True and correct copies of Dr. Fedder's invoice and Boston Coach Transportation's Invoice are attached hereto as Exhibit "E."

15. Defendants respectfully request this Court order plaintiff to appear on 2008, at p.m. at 655 Lankenau Medical Building East Wynnewood, PA 19096.

16. Defendants also request plaintiff reimburse them for the expenses resulting from plaintiff's failure to appear for the medical examination.

17. The discovery deadline in this matter is August 31, 2008.

WHEREFORE, defendants, David A. Marsh and Wayne Storage Co., t/a Wayne Moving & Storage Company, Inc., respectfully request that this Honorable Court enter the attached Order granting this Motion to Compel and for sanctions.

RAWLE & HENDERSON LLP

By: /s/ Delia A. Clark
Delia A. Clark 3337
Attorneys for Defendants,
David A. Marsh and Wayne Storage Co., t/a
Wayne Moving & Storage Company, Inc.
300 Delaware Avenue, Suite 1015
Wilmington, DE 19809

Dated: August 5, 2008

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of Defendants' Motion to Compel and for Sanctions, was served via electronic filing on the following:

Bruce L. Hudson, Esquire
800 N. Kings Street, Ste. 302
Wilmington, DE 19801

RAWLE & HENDERSON, L.L.P.

Delia A. Clark
Delia A. Clark

Dated: August 5, 2008

EXHIBIT “A”

MARLA L. BITMAN
856-797-8921
mbitman@rawle.com

40 LAKE CENTER EXECUTIVE PARK
SUITE 200, 401 ROUTE 73 NORTH
MARLTON, NJ 08053

TELEPHONE:(856) 596-4800
FACSIMILE:(856) 596-6164

January 31, 2008

Delaware State Hospital
1901 N Dupont Highway
New Castle, DE 19720

RE: Morgan v. Wayne Storage co. and David Marsh
Our File No.: 301,455

Dear Sir/Madam:

Enclosed is a subpoena requiring you to produce any and all document(s) from regarding **Hector Morgan, 625 Homestead Road, Wilmington, DE 19805; SSN: 221-68-5711, DOB: 12/19/58 on or before February 18, 2008.**

We will reimburse you for the reasonable cost of copying and mailing the requested records. Kindly provide us with an invoice, and forward the invoice along with the records, to my attention, at the address noted above.

Very truly yours,

RAWLE & HENDERSON LLP

By:

Marla L. Bitman, Paralegal to
Delia A. Clark, Esquire

MLB/

Enclosure

cc: Bruce Hudson, Esquire (w/encl.)

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

HECTOR MORGAN

C.A. No. 07-720

v.

DAVID A. MARSH and WAYNE STORAGE CO. :
T/A WAYNE MOVING & STORAGE :
COMPANY, INC. :

JURY TRIAL DEMANDED

TO: Records Custodian
Delaware Psychiatric Center
1901 North DuPont Highway
New Castle, DE 19720

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **Any and all records**, including but not limited to Patient questionnaire, Patient information sheet, doctor's notes, nurses' notes, consultation reports, notes of other office and medical personnel, history notes, hand-written notes, and typed notes, electronic data including electronic data stored in a retrieval system, office records, billing statements, payment records, health insurance claim forms, correspondence, correspondence from attorney to Deponent, correspondence from Deponent to attorney, memoranda, index cards, radiology reports, medical records, medical reports, prescription slips, and any other records, reports, records stored at an off-site facility, and any other documentation relating to any examination, consultation, care or treatment rendered at any time to: **Hector Morgan, 625 Homestead Road, Wilmington, DE 19805, DOB: 12/19/58, SSN: 221-68-5711.** A personal appearance is waived if the documents are received before the dated listed below.

PLACE
Rawle & Henderson LLP
300 Delaware Avenue, Suite 1015
Wilmington, DE 19801

DATE AND TIME
February 18, 2008 at 10:00 a.m.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. *Delaware Superior Court Civil Rule 30(b)(6)*.

REQUESTING PARTY'S NAME, ADDRESS AND PHONE NUMBER

Delia A. Clark, Esquire
Rawle & Henderson LLP
300 Delaware Avenue, Suite 1015
Wilmington, DE 19801
Telephone (302) 654-0500

ISSUING PARTY'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

PROOF OF SERVICE		
SERVED	DATE	PLACE 1901 North DuPont Highway New Castle, DE 19720
SERVED ON (PRINT NAME) Delaware Psychiatric Center		MANNER OF SERVICE CERTIFIED MAIL
SERVED BY (PRINT NAME) DELIA CLARK, ESQ.		TITLE ATTORNEY FOR DEFENDANTS

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER
ADDRESS OF SERVER
RAWLE & HENDERSON LLP
300 Delaware Avenue
Suite 1015
Wilmington, DE 19801

Superior Court Civil Rule 45, Parts C, D & E:

© PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(b)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court.

**N THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

HECTOR MORGAN	:	
	:	C.A. No. 07-720
v.	:	
DAVID A. MARSH and WAYNE STORAGE CO.	:	JURY TRIAL DEMANDED
T/A WAYNE MOVING & STORAGE	:	
COMPANY, INC.	:	

CERTIFICATE OF AUTHENTICITY

Delaware Psychiatric Center
1901 North DuPont Highway
New Castle, DE 19720

Re: Hector Morgan

I am the Custodian of Records for the above-named deponent.

I hereby declare under the penalty of perjury under the laws of the United States of America that a thorough search of our files was made in answer to the Records Subpoena attached hereto, and that the documents provided herein represent a full and complete response to the documents requested in the aforesaid Subpoena.

I further declare under the penalty of perjury under the laws of the United States of America that the attached documents are true and correct copies of the originals retained by our office.

SIGNATURE

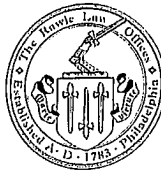
(PRINT NAME)

(TITLE)

DATE: _____

EXHIBIT “B”

RAWLE & HENDERSON LLP



DELIA A. CLARK
215-575-4291
DCLARK@RAWLE.COM

The Nation's Oldest Law Office • Established in 1783

www.rawle.com

300 DELAWARE AVENUE
SUITE 1015, P.O. Box 588
WILMINGTON, DE 19899-0588

TELEPHONE: (302) 778-1200
FACSIMILE: (302) 778-1400

June 11, 2008

Bruce L. Hudson, Esquire
800 N. Kings Street, Ste. 302
Wilmington, DE 19801

RE: Hector Morgan v. Wayne Storage co. and David Marsh
Our File No.: 301,455

Dear Mr. Hudson:

This letter will confirm that transportation arrangements have been made with Boston Coach for the transporting of Mr. Morgan to and from the defense examination with Dr. Stephen L. Fedders on July 7, 2008 at 9:00 a.m. Boston Coach will pick up Mr. Morgan at his residence on July 7 at 7:45 a.m.

If you have any questions or concerns with the above arrangements, please contact me immediately.

Thank you for your attention in this regard.

Very truly yours,

RAWLE & HENDERSON LLP


By: _____

Delia A. Clark

DAC/slb

EXHIBIT “C”

301455

**FACSIMILE MESSAGE
FROM
RAWLE & HENDERSON LLP**

DATE: July 16, 2008

FILE #: 301455

ATTY #: 1070

FROM: Christine A. O'Lano

DIRECT DIAL: (215) 575-4333

NUMBER OF PAGES INCLUDING COVER PAGE: 4

TO: Bruce Hudson, Esquire

COMPANY:

FAX NUMBER: 302-656-9836

COMPANY NUMBER: 302-656-9850

FAXED

TO:

COMPANY:

FAX NUMBER:

COMPANY NUMBER:

TO:

COMPANY:

FAX NUMBER:

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COMPANY:

FAX NUMBER:

COMPANY NUMBER:

COMMENT:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (215) 575-4422 AND ASK FOR THE FAX OPERATOR. R&H TELECOPIER (215) 563-2583.

*******CONFIDENTIALITY NOTICE*******

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** Transmit Conf. Report **

P.1

Line 1

Rawle & Henderson

Fax: 215-563-2583

Jul 16 2008 16:01

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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**FACSIMILE MESSAGE
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RAWLE & HENDERSON LLP**

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FROM: Christine A. O'Lano

DIRECT DIAL: (215) 575-4333

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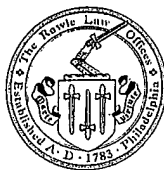
COMMENT:

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IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (215) 575-4422 AND ASK FOR THE FAX OPERATOR. R&H TELECOPIER (215) 563-2583.

*****CONFIDENTIALITY NOTICE*****

RAWLE & HENDERSON LLP



CHRISTINE A. O'LANO
215-575-4333
COLANO@RAWLE.COM

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www.rawle.com

THE WIDENER BUILDING
ONE SOUTH PENN SQUARE
PHILADELPHIA, PA 19107

TELEPHONE: (215) 575-4200
FACSIMILE: (215) 563-2583

July 16, 2008

Via First Class Mail & Fax Transmission

Bruce Hudson, Esquire
800 N. King Street
Suite 302
Wilmington, DE 19801

RE: Hector Morgan v. David Marsh and Wayne Storage Co., et al
C.A. No. 07-720
Our File No. 301455

Dear Mr. Hudson:

Please be advised that the independent medical examinations of plaintiff, Hector Morgan, has been scheduled with Dr. Steven Fedder on **August 4, 2008 at 9:30 a.m.** The examination will be held at 655 Lankenau Medical Building East Wynnewood, PA 19096. Notice is enclosed.

The transportation service of Boston Coach will provide for Mr. Morgan's transportation to and from the IME w/Dr. Fedder on August 4, 2008. Boston Coach will arrive to pickup Mr. Morgan at his residence at 8:30 a.m. on August 4, 2008.

Thank you for your attention to this matter.

Very truly yours,

RAWLE & HENDERSON LLP

By:

Christine A. O'Lano
Christine A. O'Lano, Paralegal to
Delia A. Clark

CAO/
Enclosure

File No. 301,455

RAWLE & HENDERSON LLP

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

HECTOR MORGAN

v.

DAVID A. MARSH and WAYNE STORAGE CO. :
T/A WAYNE MOVING & STORAGE :
COMPANY, INC. :

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C.A. No. 07-720

JURY TRIAL DEMANDED

NOTICE OF INDEPENDENT MEDICAL EXAMINATION

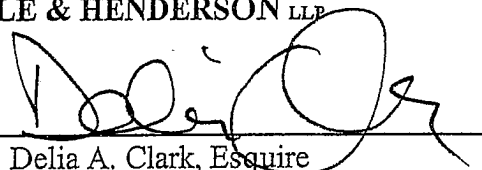
TO: Bruce Hudson, Esquire
800 N. King Street Suite 302
Wilmington, DE 19801

PLEASE TAKE NOTICE that the Independent Medical Examination of plaintiff, **Hector Morgan**, shall take place on August 4, 2008 at 9:30 a.m. at the offices of Dr. Steven Fedder, 655 Lankenau Medical Building East Wynnewood, PA 19096.

You are hereby invited to attend.

RAWLE & HENDERSON LLP

By: _____


Delia A. Clark, Esquire
Attorneys for Defendants, David A.
Marsh and Wayne Moving &
Storage Company, Inc.

Dated: July 16, 2008

EXHIBIT “D”

Delia Clark

From: Celeste Harrison
Sent: Friday, August 01, 2008 11:06 AM
To: Delia Clark
Subject: FW: Hector Morgan IME

FYI

-----Original Message-----

From: Bruce L. Hudson [mailto:delaw@brucehudsonlaw.com]
Sent: Friday, August 01, 2008 11:00 AM
To: Celeste Harrison
Subject: RE: Hector Morgan IME

At this time all systems are go. We have our fingers crossed also.

Bruce Hudson

From: Celeste Harrison [mailto:CHarrison@rawle.com]
Sent: Friday, August 01, 2008 10:44 AM
To: delaw@brucehudsonlaw.com
Subject: Hector Morgan IME

Bruce,

I'm working with Delia Clark on the Hector Morgan matter. We called your office today to confirm that Mr. Morgan will be attending the medical examination with Dr. Fedder on August 4.

Kindly let us know if Mr. Morgan advises of any intention to cancel or not appear for the appointment to reduce not only Dr. Fedder's cancellation fee, but also the cancellation fee for the transportation service we have retained to take Mr. Morgan to and from the examination.

Regards,

Celeste Harrison
Rawle & Henderson LLP
The Nation's Oldest Law Offices
Established 1783
(215) 575-4340
FAX (215) 563-2583
www.rawle.com

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8/5/2008

prohibited and may be unlawful.

CERTIFICATION OF SERVICE

I hereby certify that on today's date I served a true and correct copy of the foregoing Notice of Independent Medical Examination of Plaintiff, Hector Morgan, via first-class mail, postage prepaid, upon all attorneys and interested parties of record, addressed as follows:

Bruce Hudson, Esquire
800 N. King Street Suite 302
Wilmington, DE 19801

RAWLE & HENDERSON

By: 

Delia A. Clark, Esquire
Attorneys for Defendants, David A.
Marsh and Wayne Moving &
Storage Company, Inc.

Dated: July 16, 2008